

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO. 5:17-CR-00012-KDB-DSC**

UNITED STATES OF AMERICA,

v.

RANDY LEE BIVENS,

Defendant.

ORDER

THIS MATTER is before the Court on Defendant's Motion to "review" his conviction (Doc. No. 105).

Defendant moves the Court to "review" his conviction of violation of 18 U.S.C. § 922(g), which the Court will treat as a motion for the appointment of counsel to represent him in pursuing relief under the Fourth Circuit's decision in *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020). Defendant has no constitutional right to the appointment of counsel to file post-conviction motions. *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007) (citing *Coleman v. Thompson*, 501 U.S. 722, 756-57 (1991)); *Rouse v. Lee*, 339 F.3d 238, 250 (4th Cir. 2003), *cert. denied*, 541 U.S. 905 (2004) (citing *Pennsylvania v. Finley*, 481 U.S. 551, 555-56 (1987) (no constitutional right to counsel beyond first appeal of right)).

The Court may, in some circumstances, appoint counsel to represent a prisoner when the interests of justice so require, and the prisoner is financially unable to obtain representation. *See* 18 U.S.C. § 3006A(a)(2)(B). In the instant case, however, Defendant has failed to demonstrate that the interests of justice warrant the appointment of counsel. *See United States v. Riley*, 21 F. App'x

139, 141-42 (4th Cir. 2001). Additionally, the Court notes that *Gary* was recently reversed by *Greer v. United States*, 141 S. Ct. 2090 (2021).

IT IS, THEREFORE, ORDERED that Defendant's Motion (Doc. No. 105) is **DENIED**.

Signed: July 15, 2021



Kenneth D. Bell
United States District Judge

